

Before the
Copyright Royalty Board
United States Copyright Office
Washington, D.C. 20540

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JUL 21 2009

Copyright Royalty Board

In the Matter of)
)
Distribution of DART Sound Recordings)
Fund Copyright Owners)
Subfund Royalties For 2008)

Docket No. 2009-3 CRB DD 2008

**NOTICE OF SETTLEMENT AND REQUEST FOR PARTIAL DISTRIBUTION OF THE
2008 SOUND RECORDINGS FUND/COPYRIGHT OWNERS SUBFUND ROYALTIES**

The Alliance of Artists and Recording Companies ("AARC"), on behalf of itself and ROIR Records, VP Records, Kosmic Daydream, Eric N. Burns, Eric N. Burns D.B.A. Art Seigner, Herman Kelly, Fred James, Sylar, the Process, J Rad, Barry Cohen, Joel Evan, Kettle, Joe, Kosmic Daydream, Nation, John Kazian, Neptune, Vanessa Thomas and JC Records (collectively referred to as the "Settling Parties"), submits this notice reporting that the 2008 Audio Home Recording Act of 1992 ("AHRA")¹ Sound Recordings Fund/Copyright Owners Subfund distribution proceeding is settled, except for the claims of Matthew Primous and Eugene "Lambchops" Curry². Therefore, the Settling Parties request partial distribution of the 2008 Sound Recordings Fund/Copyright Owners Subfund, as follows:

¹ 17 U.S.C. §§ 1001-10 (1992).

² Mr. Curry's Sound Recording Copyright Owners claim was filed in the name of Eugene "Lambchops" Curry. However, we are aware that he has a label named Tajai Music. So, in an abundance of caution, we checked sales for Eugene "Lambchops" Curry *and* Tajai Music

I. Status of Settlement

AARC pursued and obtained settlements with twenty-six of the twenty-eight total 2008

Sound Recordings Fund/Copyright Owners Subfund claimants, as listed below:

Sound Recording Copyright Owners Subfund

Alliance of Artists and Recording Companies (AARC)

Eric N. Burns*

Eric N. Burns D.B.A Art Seigner*

Herman Kelly*

Fred James*

Sylar

The Process

J Rad

Barry Cohen

Joel Evan

Kettle Joe

Kosmic Daydream

Nation

John Kazian

Neptune

Vanessa Thomas

ROIR Records

VP Records

Kosmic Daydream

JC Records

* These claimants have signed on with AARC. Therefore, AARC will represent them in all current and future AHRA Sound Recording Fund proceedings.

All other claimants have settled with AARC only with regard to the 2008 proceeding.

The two Copyright Owner Subfund royalty claimants with whom AARC has not been able to obtain settlement are Matthew Primous and Eugene "Lambchops" Curry, both of whom have no sales, as demonstrated below. *See* Seltzer Decl. Ex. A, July 21, 2009. Therefore, the Settling Parties respectfully request distribution of 98% of the 2008 Sound Recordings Fund/Copyright Owners Subfund.

II. The Copyright Royalty Board Has Authority to Order the Distribution of Royalty Fees Not Subject to Controversy.

Partial distribution of the 2008 Sound Recordings Fund/Copyright Owners Subfund is warranted to prevent any further delay in the distribution of royalties that are not in controversy. The Copyright Royalty Judges may order distribution of royalties, pursuant to section 801(b)(3)(A), "to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy." Copyright Royalty and Distribution Reform Act, 17 U.S.C. § 801(b)(3)(A) (2008). Here, the Settling Parties have established that the two remaining claimants in the Copyright Owners Subfund are entitled to minimal, if any, royalties based on the distribution, or lack of distribution, of their sound recordings during the 2008 royalty year. *See infra* Section III. Therefore, the Settling Parties have satisfied the statutory requirements under § 801(b)(3)(A). Partial distribution, as statutorily permitted, under § 801(b)(3)(A), will allow the Settling Parties to collect the royalties to which they are entitled, while retaining sufficient funds to cover the outstanding claims.

In addition to the existing statutory and regulatory mandates, there is ample precedent supporting the grant of partial distribution of royalties prior to a formal declaration of controversy. Last year, the Copyright Royalty Board ("CRB") granted AARC's motion for a partial distribution of 98% of the 2007 Sound Recordings Fund. Order, In the Matter of Distribution of 2007 Digital Audio Recording Royalty Funds, Docket No. 2008-3 CRB DD 2007 (October 14, 2008). The CRB also granted partial distribution of the 2005, 2004, 2003, and 2002 Sound Recordings Fund and Musical Works Fund proceedings. Order, In the Matter of Distribution of 2006 Digital Audio Recording Royalty Funds, Docket No. 2008-2 CRB DD 2006 (July 23, 2008). Order, In the Matter of Distribution of 2005 Digital Audio Recording Royalty Funds, Docket No. 2006-4 CRB DD 2005 (November 16, 2006); Order, In the Matter of

Distribution of the 2002, 2003 and 2004 Digital Audio Recording Funds, Docket No. 2006-5 CRB DD 2002-2004 (Oct. 2, 2006).

The Copyright Arbitration Royalty Panel (“CARP”) and the Copyright Royalty Tribunal (“CRT”) have historically awarded partial distributions, expediting the distribution of uncontested royalties to the interested copyright parties who were entitled to them. *See e.g.*, Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9365 (Feb. 7, 2001); Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 99-3 CARP DD 95-98 (Dec. 22, 1999); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (Oct. 8, 1998); Order, In The Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (Oct. 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (Oct. 23, 1996); Order, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 (Sept. 12, 1994); Order, In The Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 993 (Sept. 24, 1994); see also Order, In The Matter of Distribution of the 1992-1995 Satellite Royalty Funds, Docket No 97-1 CARP SD 92-95 (Mar. 17, 1997).

The above-referenced CRT and Copyright Arbitration Royalty Panel (“CARP”) decisions must be considered as precedent by the CRB under the provisions of § 803(a)(1) of the Copyright Royalty and Distribution Reform Act of 2004, which states:

The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, and the Copyright Royalty Judges.

Copyright Royalty and Distribution Reform Act, 17 U.S.C. § 803(a)(1) (2008).

In the aforementioned proceedings, the Copyright Royalty Tribunal ("CRT") and the Copyright Office reasoned that the delay between the collection of royalties, the filing of claims and the expected initiation of proceedings justified partial distribution of the relevant royalty funds in advance of the declaration of a controversy. *See e.g.*, Distribution Order, Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9365 (Feb. 7, 2001). In the case at hand, the delay between collection and distribution of DART royalties also warrants partial distribution. All but a de minimis amount (if any) of the collected royalties are not in controversy. If a partial distribution is not issued, the distribution of the Settling Parties' royalties will be delayed for months, if not years. Such a delay would substantially deprive the Settling Parties of the royalties they have negotiated in good faith in a concerted effort to minimize administrative costs and expedite the proceeding by avoiding litigation. Accordingly, the Settling Parties respectfully request that the CRB distribute 98% of the 2008 Sound Recordings Fund/Copyright Owners Subfund.

III. Partial Distribution of 98% of the 2008 Sound Recordings Fund/Copyright Owners Subfund Is Warranted.

Pursuant to the AHRA, allocation of the 2008 Sound Recordings Fund/Copyright Owners Subfund royalties must be based on distribution (record sales) of the claimants' sound recordings during the royalty year, in this case, 2008. 17 U.S.C. § 1006(c) (2008); 62 Fed. Reg. 6,558, 6,561 (Feb. 12, 1997). SoundScan is the industry-recognized source for sound recording sales in the United States and also the data source used by AARC to determine annual distribution of royalties.

Historically, decision makers in DART distribution proceedings have recognized SoundScan as a reliable sales data source. Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (Feb. 7, 2001); *see also* Distribution of 1992, 1993 and 1994 Musical Works Fund, 62 Fed. Reg. 6558, 6562 (Feb. 12, 1997). Based on figures compiled by SoundScan, the 2008 total record sales for all claimants of the 2008 Sound Recordings Fund/Copyright Owners Subfund are 1,223,490,142 sales units, respectively. *See* Seltzer Decl. Ex. A, July 21, 2009. SoundScan compiles sales data based on labels and featured artists. *Id.* The SoundScan data lists no sales for a label named Matthew Primous or Eugene “Lambchops” Curry/Tajai Music. *Id.*

The Settling Parties’ Copyright Owners Subfund claims total 1,223,490,142 units, equaling 100% of the universe of the Copyright Owners Subfund. We therefore request that the Copyright Office distribute 98% of the 2008 royalties when such royalties next become available for distribution because they are not in controversy. Distribution of less than 98% of the 2008 funds would further deprive the Settling Parties of a substantial amount of royalties that belong to them and would result in the CRB holding royalties that are not in controversy. Furthermore, we believe that the 2% of 2008 Sound Recordings Fund/Copyright Owners Subfund royalties that would remain with the CRB would provide more than sufficient funds to satisfy any Copyright Owners Subfund claims that Matthew Primous and/or Eugene “Lambchops” Curry may substantiate, especially in light of the fact that the SoundScan data shows no sales for either of them. *See* Seltzer Decl. Ex. A, July 21, 2009.

As to the amounts to be distributed to each Settling Party, we move to have the distribution made in bulk to AARC as a common agent for all Settling Parties. Agreements as to the proportionate allocation of royalties and the designation of a common agent to receive payment on behalf of the Settling Parties are permitted by the AHRA. 17 U.S.C. § 1007(a)(2).

IV. Conclusion

The Settling Parties agree that settlements were reached in an attempt to minimize the costs of the 2008 distribution proceeding. Consequently, the Settling Parties have agreed that the terms of the settlement agreements have no precedential effect on any future AHRA proceedings.

WHEREFORE, for the reasons set forth above, the Settling Parties respectfully request that, pursuant to § 801(b)(3)(A), the CRB make a prompt partial distribution of 98% of the 2008 Sound Recordings Fund/Copyright Owners Subfund to AARC, as agent for the Settling Parties.

Respectfully submitted,
On Behalf of the Settling Parties

A handwritten signature in black ink, reading "Linda R. Bocchi". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Bocchi".

Linda R. Bocchi, Esq.
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VA BAR # 77599
Executive Director
Alliance of Artists and Recording Companies
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July 21, 2009

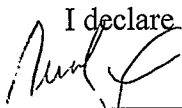
EXHIBIT A

DECLARATION OF RICHARD SELTZER

I, Richard Seltzer, declare under penalty of perjury as follows:

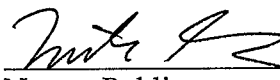
1. I am a Professor of Political Science at Howard University, and I currently teach two advanced graduate courses in statistics and two other courses in statistics and survey techniques. I have also designed and conducted surveys for over twenty years. I have previously been qualified as an expert in statistics and survey research in several federal and state courts. In addition to my teaching responsibilities, I have acted as a consultant to a variety of organizations in creating and maintaining complex databases. In conjunction with one of these clients – the Alliance of Artists and Recording Companies ("AARC") – I have become familiar with SoundScan sound recordings sales data.
2. I confirm that AARC's Royalty Distribution System uses SoundScan data to determine the annual allocation of Sound Recordings Fund royalties among claimants before the Copyright Royalty Board.
3. I have reviewed the 2008 SoundScan sales data in the AARC Royalty Distribution System.
4. The 2008 universe of record sales for claimants to the copyright owners subfunds, which include the Settling Parties as defined in AARC's "Report of Settlement Status and Request for Partial Distribution of the 2008 Sound Recordings Fund," Matthew Scott Primous and Eugene Lambchops Curry(Tajai Music) is 1,223,490,142 units.
5. I also searched the 2008 SoundScan data but did not find a label named "Matthew Scott Primous", "Eugene Lambchops Curry", or "Tajai Music". Therefore, I confirm that SoundScan reported no sales for "Matthew Scott Primous", "Eugene Lamchops Curry", or "Tajai Music" during 2008.

I declare under penalty of perjury that the foregoing is true and correct.

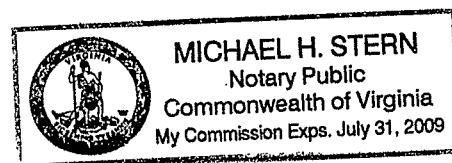

Richard Seltzer

7-21-09
Date

Certified this 21 day of 7, 2009

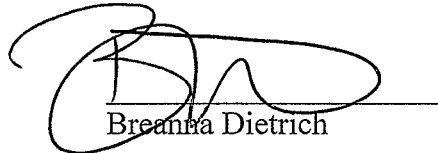

Notary Public

My commission expires: 7-31-09



CERTIFICATE OF SERVICE

I, Breanna Dietrich, Deputy Director of Royalty Administration of the Alliance of Artists and Recording Companies, certify that on this July 21, 2009, a copy of the foregoing "Notice of Settlement and Request for Partial Distribution of the 2008 Sound Recordings Fund/Copyright Owners Subfund' Royalties" was served, by the designated delivery method, on the following parties:


Breanna Dietrich

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SETTLING PARTIES BY EMAIL AND STANDARD MAIL:

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*Barry Cohen
*Kettle Joe
*Sylar
*Vanessa Thomas
*J Rad

*John Kazian
*Neptune
*Zen Tricksters
*Joel Evan
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*ROIR Records

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